

IN THE
Supreme Court of the United States

OCTOBER TERM 1945.

SANTO GRASSO,
Petitioner,

AGAINST

OIVIND LORENTZEN, Director of
Shipping and Curator for the
ROYAL NORWEGIAN GOVERNMENT,
operating as a NORWEGIAN SHIP-
PING & TRADE MISSION,
Respondent.

No. 340.

Petition for Rehearing of Petition for a Writ of Certiorari.

On the 8th day of October 1945, this Court denied the petition of Santo Grasso for a writ of certiorari to this Court to review the decision of the Circuit Court of Appeals for the Second Circuit, which on the 9th day of April 1945, affirmed the decision of Judge Henry W. Goddard dismissing petitioner's cause of action in Admiralty against the respondent herein.

The action was predicated upon an accident which occurred on the 15th day of May 1942, when the ship's cargo strap broke as a result of it being rusted through and through.

The action was tried in Admiralty before Judge Goddard on the 8th, 9th, 10th days of February, 1944.

The Trial Court found that the vessel owner was not liable, as the stevedores had failed to inspect the strap from time to time as the work was progressing.

The Trial Court did find that several strands of the cable strap were rusted.*

On the 9th day of April 1945 the Court of Appeals for the Second Circuit affirmed the judgment of the Court below, holding that the ship was under no duty to inspect its cargo strap after the stevedores commenced working with it.

On the 8th day of October 1945 this Court denied the petition's petition for a writ of certiorari.

On the 22nd day of April, 1946, this Court handed down a decision in the case of *Seas Shipping Company, Inc., Petitioner, v. Joseph Sieracki* holding that a shipowner owes the same duty to a stevedore to provide gear and equipment free from defects, as it does to a member of the crew.

In view of the *Seas Shipping Company, Inc. v. Sieracki*, decision, Grasso is entitled to recover.

The lower Court took the view that the rusty cable might have been cut by a gusset plate which had been affixed to the beam (there was no evidence that this actually happened) and held that the cause of the accident was the failure of Grasso's fellow employees to inspect the cable from time to time as the work was progressing, regardless of the fact that to all appearances the cable seemed to be in good condition.

*The Trial Court found that several strands of the cable were rusted through. On casual reading, this might indicate that the cable was not rusted through and through, however, the uncontradicted testimony is that the cable consisted of several strands, all of which were rusted through and through, about six inches each way from the break. The rusted part was the section of the strap which was concealed from view by reason of the fact that it was wedged behind an upright beam in the hold of the vessel and could not be seen on casual observation until after it broke and came away from behind the beam. These facts were not contradicted at the trial.

The facts in the case at bar present the exact identical question raised in the case of *Seas Shipping Company, Inc. v. Sieracki, supra*, decided by this Court on the 22nd day of April, 1946.

In the *Seas Shipping Company, Inc. v. Sieracki*, case, *supra*, a ship's ringbolt broke by reason of a hidden defect.

In the case at bar, a ship's cable strap broke, by reason of a defective condition, which was hidden behind a beam, which concealed the rusty part from view.

The argument in the case at bar that the cable strap *might* have been broken through usage applies with equal force to the argument that the ringbolt in the *Seas Shipping Company, Inc. v. Sieracki* case, *supra*, might have been broken in the same manner.

In neither the *Seas Shipping Company, Inc. v. Sieracki* case, *supra*, nor the case at bar was there any evidence that the work put any unusual strain on the appliance in question, or that it was broken by the stevedores failing to inspect the appliance.

In the *Seas Shipping Company, Inc. v. Sieracki* case, *supra*, no duty of inspection was placed upon the injured stevedore's fellow employees.

Accordingly, no such duty should have been imposed on petitioner's fellow employees.

In the *Seas Shipping Company, Inc. v. Sieracki* case, *supra*, this Court imposes the obligation on the vessel owner to maintain gear in a reasonably safe condition.

In the case at bar, there is no denial that the shipowner failed to maintain the cable strap in question in a reasonably safe condition, irrespective of the fact that it was in a rusty defective condition at the commencement of the work.

The *Seas Shipping Company, Inc. v. Sieracki* case, gives to a longshoreman the same protection against defective and unseaworthy appliances as has always been accorded by law to a member of a crew.

The question presented in the petition for a writ of certiorari by Santo Grasso was the same as the question raised by Seas Shipping Company, Inc.

Having granted the writ of certiorari to the Seas Shipping Company, Inc., it seems that Santo Grasso is entitled to the same relief.

Having held that Joseph Sieracki was entitled to a recovery by reason of a ship's ringbolt breaking due to a hidden defect, when it might have broken through other causes as well, there seems no reason why a recovery should be denied Santo Grasso, when the ship's rusty cable strap broke and gave way during ordinary usage.

Therefore your petitioner asks that the merits of its petition for certiorari be given consideration.

SANTO GRASSO,
Petitioner.

JACOB RASSNER,
Proctor for Petitioner.

GEORGE J. ENGLEMAN,
Of Counsel.

Dated, New York, April 23, 1946.

I hereby certify that I have examined the foregoing petition and in my opinion it is well founded and entitled to the favorable consideration of the court and that it is not filed for the purpose of delay.

JACOB RASSNER.